Provision for doubtful debt couldn't be added while computing book profit for MAT calculation: ITAT

Summary – The Hyderabad ITAT in a recent case of Southern Power Distribution Company of AP Ltd., (the Assessee) held that Clause (c) of Explanation 1 to section 115JB merely speaks of making additions to book profit, only in event where provision made for meeting liabilities is not an ascertained liability

Facts

- The assessee-company was engaged in the business of purchase and distribution of electric power. It had made a provision for bad and doubtful debts.
- The Assessing Officer had disallowed the said provision made by the assessee as unascertained liability as per clause (c) of the *Explanation* 1 to section 115JB.
- On appeal, the Commissioner (Appeals) submitted that actual loss suffered by the assessee on account of bad debts was Rs. 25.43 crores which was written off against the provision made for bad & doubtful debts and by debiting the provision by Rs. 22.81 crores during the year, the net debit to the profit and loss account during the year was (Rs. 25.43 crores - 22.81 crores) Rs. 2,54,00,000 only and there was no excess provision made and that since the actual loss incurred was greater than the provision made, nothing should be added back to book profit under section 115JB.
- He confirmed the addition by observing that subsequent to the amendment to *Explanation* 1 to section 115JB, any provision leading to diminution in the value of any asset, had to be added to the book profit.
- The assessee sought to reduce the book profit by the actual bad debts written off as it has debited the said amount to the provision for bad and doubtful debts account and not the profit and loss account.
- Judicial Member was of the opinion that the assessee was seeking reduction from the book profit by the actual bad debts written off but, such adjustment is not permissible since the Legislature has earmarked the 'book profit' and the amounts which are to be added back or reduced from such 'book profit'. The bad debts written of is not an item falling under *Explanation*-1 to section 115JB and, hence, the question of reducing the same does not arise merely on the ground that the bad debts written off is more than the provision made during the relevant year.
- The Accountant Member has proposed a separate order on this aspect since he was of the view that the impugned addition made by the Assessing Officer, was not in accordance with law. He observed that as per clause (c) of *Explanation* 1 to section 115JB, provision made for doubtful debts, being unascertained liability, deserved to be added to the book profit but in the peculiar matrix of the case, the overall picture ought to have been taken into consideration.
- There being conflict of opinion, matter was referred to Third Member.

Held

- A careful analysis of section 115JB shows that the 'book profit' means the profit as shown in the profit & loss account in the relevant assessment year, prepared under the Companies Act, and the same has to be reduced by the amount set aside to provisions made for meeting liabilities, other than ascertained liabilities. No doubt the Assessing Officer has no power to go behind the profit/loss declared for company law purposes, and the 'book profit' shown therein has to be taken as the base for making adjustments under section 115JB. Both the Members have expressed their views mainly based on the interpretation of clause (*c*) to *Explanation* 1 of section 115JB which merely speaks of making additions to the book profit, only in the event where the provision made for meeting liabilities is not an ascertained liability. In the instant case, the assessee has debited the expenditure to the tune of Rs. 131.93 crs to arrive at the book profit and Schedule-14 shows that a sum of Rs. 22,89,02,937 was provided for with the narration 'Bad & Doubtful debts Provided for/Written off'. In other words, it is not specified as to whether it was only a provision or a write off. However, going by the facts stated elsewhere, it is clear that the assessee was maintaining separate provision account wherein it was shown that the bad debts written off is an ascertained liability. In fact the assessee ought to have claimed deduction of the entire ascertained liability but chose to write off only to the tune of Rs. 22.89 crs. clause (c) to *Explanation* 1 empowers Assessing Officer to increase the book profit to the extent of amount set aside for meeting unascertained liabilities whereas in the instant case, as against the correct figure of Rs. 25,43,02,937, the assessee has written off only to the tune of Rs. 22,89,02,937 which is an ascertained liability and, thus, the same cannot be taken into consideration. In fact Schedule-14, annexed to the profit & loss account, prepared for company law purposes, indicate that the assessee clearly mentioned it as bad and doubtful debts written off. There is no dispute with regard to the fact that the Tax Authorities have not stated anywhere that the liability to the tune of Rs. 25,43,02,937 is not an ascertained liability. If the assessee has claimed lesser than the ascertained liability, it cannot be assumed that it is a provision merely because of a different accounting method followed by the assessee. The view taken by the Judicial Member is not in accordance with law. At the same time, the view taken by the Accountant Member also deserves to be modified in view of the fact that the grounds of appeal is restricted to disallowance of Rs. 22.89 crores only. Therefore, there is no claim with regard to the allowance of Rs. 25,43,02,937 either in the grounds of appeal or Schedule-14. The actual claim made by the assessee in the profit & loss account maintained for Company Law purposes cannot be tinkered with by the Assessing Officer but at the same time further benefit cannot be given; the Tribunal cannot ask the Assessing Officer to give some more relief, in addition to the relief claimed in the Grounds of Appeal. The Accountant Member was of the view that the entire amount of Rs. 25,43,02,937 should be taken into consideration for recomputation. The issue which arises out of the order of the Commissioner (Appeals) is confined to Rs. 22.89 crores and the ground being limited to the said addition, the Tribunal cannot go beyond the issue as raised by the assessee and, therefore, the Accountant Member ought to have confined the issue to the correctness of the addition made therein.

- In the peculiar facts of the case, the addition made by the Assessing Officer to the tune of Rs. 22.19 crores is not in accordance with law since this is a part of the ascertained liability which was otherwise adjusted in the provision account separately maintained by the assessee though, while claiming write off, it was restricted to Rs. 22.89 crores. In other words, in principle, the view taken by the Accountant Member is agreed with. The assessee is not entitled to further reduction to the book profit but the disallowance of Rs. 22,89,02,937 deserves to be set aside.